

REMARKS

This amendment is submitted in response to the final Office Action mailed on September 21, 2005. Claims 1-9 and 11 are pending in this application. Claim 10 was previously canceled. Claims 12-20 were previously withdrawn. In the Office Action, Claim 11 is objected to; Claims 1 and 11 are rejected under 35 U.S.C. §112, second paragraph; Claims 1-5, 7-8 and 11 are rejected under 35 U.S.C. §102; and Claim 6 and 9 are rejected under 35 U.S.C. §103. In response, Claim 1 has been amended, and Claim 11 has been canceled. This amendment does not add new matter. In view of the amendment and/or for the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claim 11 is objected to. In response, Claim 11 has been canceled.

In the Office Action, Claim 1 is rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Patent Office alleges that the claim does not indicate the degree of similarity between the viscosities of the fermented milk products. In response, Applicants have amended Claim 1 to remove the language regarding the viscosities. In view of the amendment to Claim 1, Applicants submit that this claim fully complies with 35 U.S.C. §112, second paragraph. Accordingly, Applicants respectfully request that the rejection of Claim 1 under 35 U.S.C. §112 be withdrawn.

In the Office Action, Claims 1-5, 7-8 and 11 are rejected under 35 U.S.C. §102(e) as anticipated by U.S. Patent No. 6,235,320 to Daravingas et al. ("*Daravingas*"). Applicants respectfully disagree with and traverse this rejection for at least the reasons set forth below.

Applicants have amended independent Claim 1 to recite, in part, a composite soft, unripened curd fermented milk product comprising a pot defining a filling volume and containing distinct adjoining masses including at least one fermented milk base and at least one flavoring composition or at least two fermented milk bases, wherein the masses are of contrasting colors and are arranged side by side and the interface between the contrasting masses is a median surface within the volume of the pot. This amendment is supported in the specification, for example, at page 2, lines 19-38. In contrast, Applicants respectfully submit that *Daravingas* fails to disclose every element of the present claims.

For example, *Daravingas* fails to disclose or suggest an unripened curd fermented milk product as required by Claim 1. *Daravingas* also fails to disclose or suggest masses that are of contrasting colors and are arranged side by side and the interface between the contrasting masses is a median surface within the volume of the pot as required by Claim 1.

For the reasons discussed above, Applicants respectfully submit that Claim 1 and Claims 2-5, 7-8 and 11 that depend from Claim 1 are novel, nonobvious and distinguishable from the cited reference. Accordingly, Applicants respectfully request that the rejection of Claims 1-5, 7-8 and 11 under 35 U.S.C. §102 be withdrawn.

In the Office Action, Claims 6 and 9 are rejected under 35 U.S.C. §103 as being unpatentable over *Daravingas* in view of EP 0853888 to Warendorf ("*Warendorf*"). Applicants respectfully submit that the patentability of Claim 1 renders moot the obviousness rejection of Claims 6 and 9. In this regard, the cited art fails to teach or suggest the elements of Claims 6 and 9 in combination with the novel elements of Claim 1.

Further, Applicants respectfully submit that there is no suggestion or motivation to combine the cited references to obtain the present claim. *Daravingas* is entirely directed to multiple layered products consisting only of yogurt bases. See, *Daravingas*, column 2, lines 15-27. By contrast, *Warendorf* is entirely directed to a single milk-based component with embedded, gelatin-stabilized, fruit composition. See, *Warendorf*, Abstract. Furthermore, *Warendorf* fails to disclose or suggest that its milk-based component can be embedded with a fruit preparation to achieve a multiple layered milk-base product similar to the multiple yogurt bases in *Daravingas*. Thus, there is no direction provided in the cited references suggesting how the references should be combined to obtain the present claims.

Applicants respectfully submit that the Patent Office has improperly applied hindsight reasoning by selectively piecing together teachings of each of the references in an attempt to recreate what the claimed invention discloses. As the Federal Circuit explained, "the mere fact that the prior art may be modified in the manner suggested by the examiner does not make the modification obvious unless the prior art suggested the desirability of the modification." *In re Fritch*, at 1783-17. One cannot use "hindsight reconstruction to pick and choose among isolated disclosures in the prior art" to re-create the claimed invention. *In re Fine*, 5 U.S.P.Q. 2d 1596 (Fed. Cir. 1988).

Applicants also respectfully submit that, even if combinable, the cited references do not disclose all of the claimed elements. For example, *Daravingas* and *Warendorf* fail to disclose or suggest masses that are of contrasting colors and are arranged side by side and the interface between the contrasting masses is a median surface within the volume of the pot as required by Claim 1. Moreover, the fruit-based component of *Warendorf* is in the form of small pieces. See, *Warendorf*, page 2, lines 13-15. The small pieces rely on calcium in the milk-based component to form a firm gel. The fruit-based pieces are therefore gelified in situ due to the reaction between pectin in the fruit-based component and calcium in the milk-based component. See, *Warendorf*, page 2, lines 42-49. In contrast, the present invention is directed to bases and flavoring compositions as distinct adjoining masses.

For the reasons discussed above, the combination of *Daravingas* in view of *Warendorf* is improper. Moreover, even if combinable, *Daravingas* and *Warendorf* do not teach, suggest, or even disclose Claims 6 and 9, and thus, fails to render the claimed subject matter obvious for at least these reasons.

Accordingly, Applicants respectfully request that the obviousness rejection with respect to Claims 6 and 9 be reconsidered and the rejection be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

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